

# MERCANTILE

BANK, N.A.

December 26, 1991

Mrs. Mildred Lee, Secretary  
Interstate Commerce Commission  
12th St. and Constitution, Ave. Northwest  
Washington, D.C. 20423

2-031A040  
17689  
JAN 31 1992 -1 55 PM  
INTERSTATE COMMERCE COMMISSION

JAN 31 1 50 PM '92  
MOTOR OPERATING UNIT

RE: Texas Railcar Leasing Co., Inc.

Dear Mrs. Lee:

Enclosed are an original and a certified copy of the document described below to be recorded pursuant to Section 11303 of the Interstate Commerce Act, Vol. 49 of the U.S. Code of Federal Regulations.

This document consist of the Security Agreement, a primary document, dated December 26, 1991. A description of the underlying equipment covered by the document is as follows:

Nine (9) Covered Top Hopper Railcars numbered:

TMGX 170; 171; 172; 173; 174; 175; 176; 177; and 178

The bank's security interest includes the assignment of a Promissory Note dated December 26, 1991 in the amount of \$130,500.00, due January 26, 1992, executed by Grain Hoppers, Inc., payable to Texas Railcar Leasing Co., Inc. collateralized by the above referenced cars.

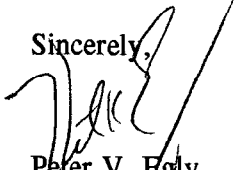
A fee of \$16.00 is enclosed for said registration. Please return the original and any extra copies not needed by the commission for recording to the attention of the undersigned at Mercantile Bank, N. A., P. O. Box 2219, Brownsville, TX 78522.

We respectfully request a brief summary of the document to appear in the index as follows:

A Security Agreement between Texas Railcar Leasing Co., Inc.:  
1207 First City Texas Tower, McAllen, TX 78502-1330 and  
Mercantile Bank, N.A.: P.O. Box 2219, Brownsville, TX 78522  
covering a Promissory Note dated December 26, 1991 by and between Grain  
Hoppers, Inc. and Texas Railcar Leasing, Co., Inc. i/a/o \$130,500.00, secured by 9  
Covered Top Hopper Railcars.

Should you have any questions, please do not hesitate to contact me at (512) 548-6234. Thanking you in advance for your assistance in this matter, I remain

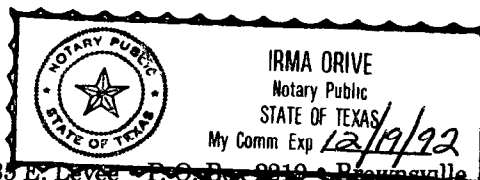
Sincerely,

  
Peter V. Egly  
Vice President

The State of Texas §  
County of Cameron §  
This instrument was acknowledged before me on  
January 2, 1992 by Peter V. Egly, Vice President  
of Mercantile Bank, N.A.

PVE:wp:

Enc.



  
Notary Public, State of Texas

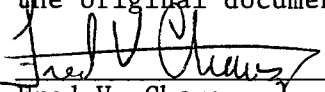
The MERCANTILE • 835 E. Levee • P.O. Box 2219 • Brownsville, Texas 78522-2219 • (512) 546-2421

Member FDIC

# MERCANTILE

## BANK, N.A.

The undersigned hereby certifies that this is a true and correct copy of the original document.

  
Fred V. Chavez

December 26, 1991

Mrs. Mildred Lee, Secretary  
Interstate Commerce Commission  
12th St. and Constitution, Ave. Northwest  
Washington, D.C. 20423

RE: Texas Railcar Leasing Co., Inc.

Dear Mrs. Lee:

Enclosed are an original and a certified copy of the document described below to be recorded pursuant to Section 11303 of the Interstate Commerce Act, Vol. 49 of the U.S. Code of Federal Regulations.

This document consist of the Security Agreement, a primary document, dated December 26, 1991. A description of the underlying equipment covered by the document is as follows:

Nine (9) Covered Top Hopper Railcars numbered:

TMGX 170; 171; 172; 173; 174; 175; 176; 177; and 178

The bank's security interest includes the assignment of a Promissory Note dated December 26, 1991 in the amount of \$130,500.00, due January 26, 1992, executed by Grain Hoppers, Inc., payable to Texas Railcar Leasing Co., Inc. collateralized by the above referenced cars.

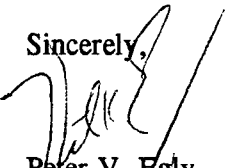
A fee of \$16.00 is enclosed for said registration. Please return the original and any extra copies not needed by the commission for recording to the attention of the undersigned at Mercantile Bank, N. A., P. O. Box 2219, Brownsville, TX 78522.

We respectfully request a brief summary of the document to appear in the index as follows:

A Security Agreement between Texas Railcar Leasing Co., Inc.:  
1207 First City Texas Tower, McAllen, TX 78502-1330 and  
Mercantile Bank, N.A.: P.O. Box 2219, Brownsville, TX 78522  
covering a Promissory Note dated December 26, 1991 by and between Grain  
Hoppers, Inc. and Texas Railcar Leasing, Co., Inc. i/a/o \$130,500.00, secured by 9  
Covered Top Hopper Railcars.

Should you have any questions, please do not hesitate to contact me at (512) 548-6234. Thanking you in advance for your assistance in this matter, I remain

Sincerely,

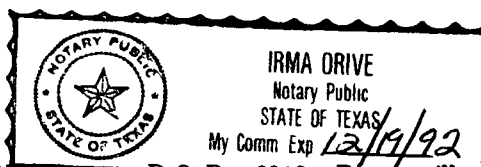
  
Peter V. Egly  
Vice President

PVE:wp:

Enc.

The **MERCANTILE** • 835 E. Levee • P.O. Box 2219 • Brownsville, Texas 78522-2219 • (512) 546-2421

The State of Texas §  
County of Cameron §  
This instrument was acknowledged before me on  
January 2, 1992 by Peter V. Egly, Vice President  
of Mercantile Bank, N.A.



  
Notary Public, State of Texas

Member FDIC

**Interstate Commerce Commission**  
Washington, D.C. 20423

2/3/92

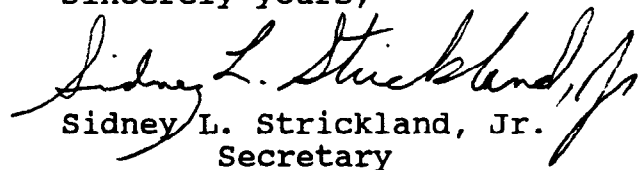
OFFICE OF THE SECRETARY

Peter V. Egly  
Mercantile Bank, N.A.  
P.O. Box 2219  
Brownsville, Texas 78522

Dear  
Sir:

The enclosed document(s) was recorded pursuant to the provisions of Section 11303 of the Interstate Commerce Act, 49 U.S.C. 11303, on 1/31/92 at 1:55pm, and assigned recordation number(s). 17689

Sincerely yours,

  
Sidney L. Strickland, Jr.  
Secretary

The undersigned hereby certifies that this is a true and correct copy of the original document.

Fred V. Chavez  
**SECURITY AGREEMENT**

**JAN 31 1992 - 1 55 PM**

Date: **December 26, 1991**

THIS SECURITY AGREEMENT ("Agreement") made and entered into by and between **Mercantile Bank, N.A.**  
("Secured Party") whose address is **835 East Levee Street, Brownsville, Texas 78520** and  
**Texas Railcar Leasing Co., Inc.** ("Debtor")  
of **1207 First City Tx Tower, McAllen, Texas 78502-1330**

as follows:

(Address - street, county, state; if mailing address different, insert both addresses)

**1. Indebtedness.** The Security Interest (defined below) is herein created to secure all obligations and indebtedness to Secured Party, direct or indirect, related or unrelated, now existing or hereafter arising, of whatsoever kind or character, whenever or however created or incurred, of Debtor and of

(Name)

(Mailing Address)

or of any of them (collectively, the "Indebtedness").

**2. Agreement and Collateral.** For value received, Debtor hereby grants to Secured Party a security interest ("Security Interest") in the following described property, together with the additional property described in paragraph 3(f) hereof, whether now owned or hereafter acquired ("Collateral"), to-wit:

(If Collateral is now or hereafter to become fixtures, crops, oil, gas or other minerals, or timber, describe land concerned and record owner thereof.)

**9 Railroad Cars as follows: TRLX 5234, 5235, 5236, 5237, 5238, 5239, 5240, & 5241. New Car Numbers: TMGX 170, 171, 172, 173, 174, 175, 176, 177, 178.**

**Promissory note dated December 26, 1991 in the amount of \$130,500.00, due January 26, 1992, executed by Grain Hoppers, Inc., payable To Texas Railcar Leasin Co., Inc.**

The Collateral shall be kept at:

The records pertaining to the Collateral shall be kept at:

(full address, if other than above)

(full address, if other than above)

**3. Debtor's Warranties, Covenants and Further Agreements.**

(a) **Title.** Except for the Security Interest, Debtor owns, or on acquisition will own, the Collateral free from any lien, security interest, encumbrance or claim (except liens for current taxes not due) and Debtor will, at Debtor's cost, keep the Collateral free from other liens, security interests, encumbrances or claims, and defend the Security Interest and Debtor's rights in the Collateral against all claims and demands of all persons at any time claiming the same or any interest therein. Debtor has the power and authority to execute, deliver, and perform this Agreement. The execution, delivery, and performance of this Agreement by Debtor do not and will not violate any law or any rule, regulation, or order of any governmental authority. This Agreement and any account, instrument or document which is, or shall be, included in the Collateral is, and shall be, genuine and legally enforceable and free from any setoff, counterclaim or defense. No notice of bankruptcy or insolvency of an account debtor has been received by Debtor.

(b) **Perfection.** No financing statement or security agreement covering the Collateral or any part thereof is on file in any public office and, at Secured Party's request, Debtor will execute all financing statements and other instruments and take all other actions deemed necessary by Secured Party to perfect the Security Interest and to assist Secured Party in complying with the Federal Assignment of Claims Act and Debtor will pay all costs thereof. If the Collateral is of such nature that possession by Secured Party is necessary to perfect Secured Party's Security Interest in such Collateral, Debtor has delivered such Collateral to Secured Party simultaneously herewith, or agrees to deliver such Collateral to Secured Party as soon hereafter as is reasonably practicable, accompanied by proper instruments of transfer and assignment duly executed. A carbon, photographic or other reproduction of this Agreement or of any financing statement covering the Collateral shall be sufficient as a financing statement and may be filed as a financing statement. The address of Debtor designated at the beginning of this Agreement is Debtor's place of business if Debtor has only one place of business; Debtor's chief executive office if Debtor has more than one place of business; or Debtor's residence if Debtor has no place of business.

(c) **Assignment.** Debtor will not sell, lease or otherwise dispose of all or any part of the Collateral, except inventory in the ordinary course of business. Secured Party may assign or transfer all or part of its rights in, and obligations, if any, under the Indebtedness, the Collateral and this Agreement.

(d) **Insurance.** Debtor will insure the Collateral with companies acceptable to Secured Party against such casualties and in such amounts as Secured Party shall require with a clause in favor of Debtor and Secured Party as their interests may appear. All policies of insurance shall provide for written notice to Secured Party at least ten (10) days prior to cancellation. Risk of loss not covered by insurance is in Debtor. If Debtor fails to obtain or maintain any insurance required hereunder or fails to provide evidence of such insurance in form and content satisfactory to Secured Party, then Secured Party, at its option and in addition to its other remedies, may obtain substitute insurance, or may obtain insurance that covers only Secured Party's interest in the Collateral. Secured Party may add to the Indebtedness the premium advanced by Secured Party for any such insurance, and may charge interest on the amount of such premium at the maximum rate permitted by applicable law. Secured Party is hereby authorized in its own name and in the name of Debtor to collect, adjust, and settle any claims under any insurance covering the Collateral or any part thereof and to endorse any checks, drafts, or instruments in connection therewith. Secured Party may apply the proceeds from any insurance to the Indebtedness in such manner as Secured Party may elect.

(e) **Maintenance.** Debtor will preserve the Collateral, keep same in good order and repair (at Debtor's own risk of loss), and will not waste, destroy, lose, allow to deteriorate (other than ordinary wear and tear), or materially modify the Collateral, or release any party liable thereon. Debtor will not exercise, or cause to be exercised, any voting rights with regard to the Collateral, without the prior written consent of Secured Party, if the direct or indirect effect of such vote would result in a material change to the Collateral or the corporation, partnership, other entity or property in which the Collateral evidences a legal or beneficial interest. Debtor will not allow the Collateral to be used in violation of any law or any policy of insurance. Secured Party, or its agents, will have the right to examine, audit, inspect and copy, as the case may be, the Collateral and any books or records pertaining thereto, which Debtor agrees to keep in an accurate and complete form, reflecting the Security Interest) at any time. Debtor shall furnish reports, data and financial statements, including audits by independent public accountants, in respect of the Collateral and Debtor's business and financial condition, as Secured Party may require. Debtor will pay promptly when due all taxes and assessments on the Collateral or for its use and operation and all costs, expenses and insurance premiums necessary to preserve, protect, maintain and collect the Collateral. Secured Party may, at its option, discharge such costs, expenses and premiums for the preservation, protection, and maintenance of the Collateral, and all sums so expended shall be part of the Indebtedness and shall bear interest at the maximum rate permitted by applicable law.

SECURED PARTY:

**Mercantile Bank, N.A.**

By:

**Peter V. Egly, Vice President**

(Name)

(Title)

DEBTOR:

**Texas Railcar Leasing Co., Inc.**

BY:

**Henry Novell**

(THIS AGREEMENT INCLUDES THE PROVISIONS ON PAGE 2 HEREOF.)

(f) **Additional Property.** The Collateral includes all proceeds, increases, substitutions, products, offspring, accessions and attachments thereof, including, without limitation, all securities, subscription rights, dividends, and other property and benefits which Debtor is entitled to receive on account of the Collateral; all equipment, tools, parts and accessories used in connection therewith; and all goods covered by chattel paper, accounts or other items of the Collateral. Debtor hereby grants Secured Party a security interest in all money, instruments and other property of Debtor now or hereafter in the possession of Secured Party and all book-entry securities in which Debtor has any interest whatsoever now or hereafter maintained in an account of Secured Party at a Federal Reserve Bank or any of its branches. Secured Party shall have the right to set off and apply against the Indebtedness or any part thereof at any time, without notice to Debtor, any and all deposits or other sums at any time credited by or due from Secured Party to Debtor, whether in a special account or other account or represented by a certificate of deposit (whether or not matured), which deposits and other sums shall at all times constitute additional security for the Indebtedness. If the Collateral includes livestock, Debtor's related feed, water privileges, equipment used in feeding and handling the livestock, and rights in contracts and leases on lands used for pasture and grazing purposes shall also be included in the Collateral. For purposes of this Agreement, the terms "account" or "accounts" shall be deemed to include chattel paper as well as accounts. Debtor will immediately deliver all additional property to Secured Party upon receipt by Debtor, with proper instruments of transfer and assignment, if possession by Secured Party is necessary to perfect Secured Party's security interest or if otherwise required pursuant to this Agreement. The Collateral does not include any additional or after acquired property that is consumer goods, except accessions and property acquired within ten (10) days after Secured Party gives value.

(g) **Change of Location.** Debtor covenants and agrees that without Secured Party's prior written consent, Debtor will not change the location (as shown hereon) of the Collateral (other than inventory in the ordinary course of business) or the records pertaining to the Collateral.

(h) **Delivery of Receipts to Secured Party.** Upon Secured Party's demand, Debtor will, upon receipt of any remittance in payment of or for the Collateral, immediately deposit all of same properly endorsed in a special bank account maintained with Secured Party over which Secured Party alone has power of withdrawal. The funds in said bank account shall be held by Secured Party as security for the Indebtedness. Secured Party may, from time to time, apply all or part of said collected funds against the Indebtedness. Debtor will inform Secured Party immediately of the rejection of goods, delay in delivery or performance, or claims made, in regard to any account or document assigned to Secured Party; keep returned goods segregated from Debtor's other property, and hold such goods as trustee for Secured Party; and pay Secured Party the unpaid portion of any assigned account (i) if such account is not paid promptly after its maturity; (ii) if purchaser does not accept the goods or services; or (iii) if Secured Party shall at any time reject the account as unsatisfactory.

(i) **Mortgagees' and Landlords' Waivers.** Debtor shall cause each mortgagee of real property owned by Debtor and each landlord of real property leased by Debtor to execute and deliver instruments satisfactory in form and substance to Secured Party by which such mortgagee or landlord waives its rights, if any, in the Collateral.

(j) **Indemnity.** Debtor hereby agrees to indemnify and hold Secured Party harmless from and against any and all present and future claims, actions, liabilities, and damages arising in connection with this Agreement, the Indebtedness, or the Collateral, and all costs and expenses (including attorneys' fees) incurred by Secured Party in respect thereof.

(k) **Notice of Changes.** Debtor will immediately notify Secured Party of any change occurring in or to the Collateral, of any change in Debtor's principal place of business, chief executive office, or residence, of any change in any fact or circumstance warranted or represented by Debtor to Secured Party, or if any event of default under this Agreement occurs.

**4. Rights of Secured Party.** Debtor hereby appoints Secured Party as Debtor's attorney-in-fact to do any act which Debtor is obligated by this Agreement to do, to exercise all rights, voting and otherwise, of Debtor in the Collateral, and to do all things deemed necessary by Secured Party to perfect the Security Interest and preserve, collect, enforce and protect the Collateral and any insurance proceeds thereof, all at Debtor's cost and without any obligation on Secured Party so to act, including, but not limited to, transferring title into the name of Secured Party, or its nominee, or receipting for, settling, or otherwise realizing upon the Collateral. Secured Party may, in its discretion, require Debtor to give possession or control of the Collateral to Secured Party; endorse as Debtor's agent any instruments, documents or accounts relating to the Collateral; contact account debtors directly to verify accounts; notify account debtors and any other parties liable under the Collateral to make payment directly to Secured Party; take control of the Collateral or proceeds thereof, including, without limitation, stock or cash dividends or stock splits, and use cash proceeds to reduce any part of the Indebtedness; exchange any of the Collateral for any other property upon any merger, consolidation, reorganization, recapitalization, or other readjustment of the issuer thereof and, in connection therewith, deposit any of the Collateral with any committee, depository, transfer agent, registrar, or other designated agency upon such terms as Secured Party may determine; file a proof of claim in any bankruptcy or similar proceeding for the full amount of the Collateral and to vote such claim for or against any arrangement or with respect to any other matter; renew, extend, or otherwise change the terms and conditions of any of the Collateral or the Indebtedness; notify the post office authorities to change the address for delivery of mail of Debtor to an address designated by Secured Party and to receive, open, and dispose of mail addressed to Debtor; require Debtor to use its best efforts to cause the issuer of the Collateral to register any or all of the Collateral under applicable securities laws, at the expense of Debtor or such issuer; require additional Collateral; reject as unsatisfactory any property hereafter offered by Debtor as Collateral; designate, from time to time, a certain percentage of the Collateral as the loan value and require Debtor to maintain the Indebtedness at or below such figure. Secured Party shall not be liable for any act or omission on the part of Secured Party, its officers, agents or employees, except willful misconduct. Secured Party shall not be responsible for any depreciation in the value of the Collateral and shall not be required to take any steps to preserve rights against prior parties or to protect, preserve, or maintain any security interest or lien given to secure the Collateral. The foregoing rights and powers of Secured Party may be exercised at any time before or after default and shall be in addition to, and not a limitation upon, any rights and powers of Secured Party given herein or by law, custom or otherwise.

**5. Events of Default.** Debtor shall be in default hereunder upon the happening of any of the following events or conditions: (a) any default in the timely payment or performance of the Indebtedness or any part thereof; (b) any failure or refusal of Debtor or any Obligated Party (hereinafter defined) to perform or observe any obligation, covenant, or agreement made or owed by it to Secured Party; (c) any warranty, representation, or statement made or furnished to Secured Party by or on behalf of Debtor or any Obligated Party proves to have been false in any material respect when made or furnished; (d) any loss, theft, substantial damage, sale, unauthorized transfer, or other deterioration or impairment of the Collateral or any part thereof; (e) the death, incapacity, dissolution, liquidation, merger, consolidation, termination of existence, insolvency, or business failure of Debtor or any Obligated Party, or the appointment of a receiver, trustee, or other legal representative for Debtor or any Obligated Party or any of their respective property, or Debtor or any Obligated Party shall make an assignment for the benefit of its creditors, or proceedings under any bankruptcy or insolvency law shall be commenced by or against Debtor or any Obligated Party; (f) any event which permits the acceleration of the maturity of Indebtedness of Debtor or any Obligated Party to others under any indenture, agreement, or undertaking; (g) the making of any levy, attachment, execution, or other process against Debtor or any Obligated Party or any of the Collateral; (h) Secured Party at any time deems itself insecure or believes that the prospect of payment or performance of the Indebtedness or any portion thereof is impaired; or (i) any judgment shall have been rendered against Debtor or any Obligated Party which remains unpaid for thirty (30) days.

For purposes of this Agreement, the term "Obligated Party" means any guarantor, surety, endorser, or other party (other than Debtor) directly or indirectly obligated, primarily or secondarily, for the Indebtedness or any portion thereof.

**6. Remedies of Secured Party upon Default.** When an event of default occurs, and at any time thereafter, Secured Party may declare all or any part of the Indebtedness immediately due and payable and may enforce payment of same and exercise any and all of the rights and remedies provided by the Texas Uniform Commercial Code ("Code"), as well as all other rights and remedies possessed by Secured Party under this Agreement, at law, in equity, or otherwise. Debtor understands that sales hereunder of Collateral consisting of securities may be restricted by applicable federal and state securities laws, and that private sales of the Collateral or sales in other transactions exempt from registration with the Securities and Exchange Commission or state securities commissioners may be necessary, which sales Debtor recognizes as commercially reasonable, notwithstanding the fact that any such private sales may result in prices or terms less favorable to the seller than if such sales were public sales. Secured Party may also require Debtor to assemble the Collateral and make it available to Secured Party at any place to be designated by Secured Party which is reasonably convenient to both parties. For purposes of the notice requirements of the Code, Secured Party and Debtor agree that notice given at least five (5) calendar days prior to the related action hereunder is reasonable. Secured Party shall be entitled to immediate possession of the Collateral and all books and records evidencing same and shall have authority to enter upon any premises, upon which said items may be situated, and remove same therefrom. Expenses of retaking, holding, preparing for sale or lease, selling, leasing, or the like, shall include, without limitation, Secured Party's reasonable attorneys' fees and legal expenses and all such expenses shall be recovered by Secured Party before applying the proceeds from the disposition of the Collateral toward the Indebtedness. Secured Party may use its discretion in applying the proceeds of any disposition of the Collateral. All rights and remedies of Secured Party hereunder are cumulative and may be exercised singly or concurrently. The exercise of any right or remedy will not be a waiver of any other.

#### **7. General.**

(a) **Waiver by Secured Party.** No waiver by Secured Party of any right hereunder or of any default hereunder shall be binding upon Secured Party unless in writing executed by Secured Party. Failure or delay by Secured Party to exercise any right hereunder or any waiver of any default hereunder shall not operate as a waiver of any other right, of further exercise of such right, or of any further default.

(b) **Parties Bound.** This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, executors, administrators, legal representatives, successors, receivers, trustees and assigns where permitted by this Agreement. If this Agreement is signed by more than one Debtor, each Debtor shall be jointly and severally liable for all representations, warranties, and agreements hereunder, and all provisions hereof regarding the Indebtedness or the Collateral shall apply to any Indebtedness or Collateral of any or all of them. This Agreement shall constitute a continuing agreement, applying to all future as well as existing transactions, such future transactions being contemplated by Debtor and Secured Party. If all Indebtedness shall at any time be paid in full, this Agreement shall nonetheless remain in full force and effect with respect to any Indebtedness thereafter incurred.

(c) **Applicable Law.** This Agreement shall be governed by and construed in accordance with the laws of the State of Texas and is performable in the county where the principal office of Secured Party is located. Except as otherwise provided herein, all terms used herein which are defined in the Code shall have the meanings therein stated.

(d) **Notice.** Notice shall be deemed given or sent when mailed postage prepaid to Debtor's address given above or to Debtor's most recent address as shown by notice of change on file with Secured Party.

(e) **Modification.** This Agreement shall not be amended in any way except by a written agreement signed by the parties hereto.

(f) **Severability.** The unenforceability of any provision of this Agreement shall not affect the enforceability or validity of any other provision hereof.

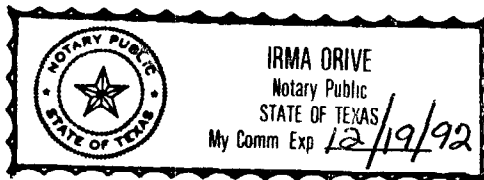
(g) **Construction.** If there is any conflict between the provisions hereof and the provisions of the Indebtedness, the latter shall control. The captions herein are for convenience of reference only and not for definition or interpretation.

(h) **Waiver by Debtor.** Debtor hereby waives presentment, demand, notice of intent to demand, notice of dishonor, protest, notice of acceleration, notice of intent to accelerate, and notice of protest and all other notices with respect to collection, or acceleration of maturity, of the Collateral and the Indebtedness.

(i) **Additional Terms.** All annexes and schedules attached hereto, if any, are hereby made a part hereof.

The State of Texas §  
County of Cameron §

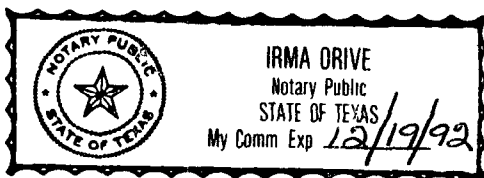
This instrument was acknowledged before me on January 2, 1992, by **Henry Novell**, President of Texas Railcar Leasing Co., Inc., a Texas corporation, on behalf of said corporation.



*Irma Orive*  
\_\_\_\_\_  
Notary Public, State of Texas

The State of Texas §  
County of Cameron §

This instrument was acknowledged before me on January 2, 1992 by **Peter V. Egly**, Vice President of Mercantile Bank, N.A., a national banking association, on behalf of said association.



*Irma Orive*  
\_\_\_\_\_  
Notary Public, State of Texas